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ABSTRACT

This pamphlet discusses Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of physical or mental handicap by any program or activity receiving federal financial assistance. The regulation applies to all recipients of Department of Education funding, with the focus of this pamphlet including colleges, universities, postsecondary vocational education, and adult education programs. The pamphlet provides guidelines on the following issues: postsecondary school provision of auxiliary aids, postsecondary student responsibilities, examples of auxiliary aids, effectiveness of auxiliary aids, cost of auxiliary aids, and personal aids and services. Questions commonly asked by funding recipients and students are then answered. (JDD)

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AUXILIARY AIDS AND SERVICES FOR POSTSECONDARY STUDENTS WITH HANDICAPS

HIGHER EDUCATION'S OBLIGATIONS UNDER SECTION 504

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AUXILIARY AIDS AND SERVICES FOR POSTSECONDARY STUDENTS WITH HANDICAPS: HIGHER EDUCATION'S OBLIGATIONS UNDER SECTION 504

U.S. Department of Education
Office for Civil Rights
Washington, D.C.

May 1991

Section 504 of the Rehabilitation Act of 1973

In 1973, Congress passed Section 504 of the Rehabilitation Act, a law that prohibits discrimination on the basis of physical or mental handicap (29 U.S.C. Section 794). It states:

> *No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.*

The Office for Civil Rights in the U.S. Department of Education (Department) enforces regulations implementing Section 504 with respect to programs and activities that receive funding from the Department (34 C.F.R. Part 104 [1988]). The Section 504 regulation applies to all recipients of this funding, including colleges, universities, and postsecondary vocational education and adult education programs. Failure by these recipients to provide auxiliary aids to students with handicaps that results in a denial of a program benefit is discriminatory and prohibited by Section 504.

Postsecondary School Provision of Auxiliary Aids

Subpart E of the Section 504 regulation contains the following requirement relating to a postsecondary

recipient's obligation to provide auxiliary aids to qualified students with handicaps:

> *A recipient . . . shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.*

It is, therefore, the recipient's responsibility to provide these auxiliary aids and services in a timely manner to ensure effective participation by students with handicaps.

Postsecondary Student Responsibilities

A postsecondary student with a handicap who is in need of auxiliary aids is obligated to provide notification of the nature of the handicapping condition to the recipient and to assist the recipient in identifying appropriate and effective auxiliary aids. In elementary and secondary schools, teachers and school specialists may have arranged support services for handicapped students. However, in postsecondary institutions, the students themselves must identify the need for an auxiliary aid and give adequate notice of the need. The student's

notification should be provided to the appropriate representative of the recipient, who, depending upon the nature and scope of the request, could be one or more of the following: the recipient's Section 504 coordinator, the appropriate dean, a faculty advisor, or professor. Unlike elementary or secondary recipients, postsecondary recipients may, in response to a request for auxiliary aids, make reasonable requests that the student provide supporting diagnostic test results and professional prescriptions for auxiliary aids. A recipient may also, on its own, obtain a professional determination of whether requested auxiliary aids are necessary and, if so, what kind.

Examples of Auxiliary Aids

Some of the various types of auxiliary aids and services may include:

- *taped texts*
- *note takers*
- *interpreters*
- *readers*
- *student tutors*
- *television enlargers*
- *talking calculators*
- *electronic readers*
- *Braille calculators, printers, or typewriters*
- *voice synthesizers*
- *assistance in filling out forms*
- *specialized gym equipment*
- *calculators or keyboards with large buttons*
- *reaching device for library use*
- *raised-line drawing kits*

Technological advances in electronics have vastly improved participation by handicapped students in educational activities. Recipients are not required

to provide the most sophisticated auxiliary aids available; however, the aids provided must effectively meet the needs of a student with a handicap. A recipient has flexibility in choosing the specific aid or service it provides to the student, as long as the aid or service selected is effective. These aids should be selected after consultation with the student who will use them.

Effectiveness of Auxiliary Aids

No aid or service will be useful unless it is successful in equalizing the opportunity for a particular student with a handicap to participate in the educational program or activity. Not all students with a similar handicap benefit equally from an identical auxiliary aid or service. The regulation refers to this complex issue of effectiveness in several sections. The specific reference to the effectiveness of auxiliary aids states:

> *Auxiliary aids may include taped texts, interpreters or other effective methods of making orally-delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions.*

There are other references to effectiveness in the regulation's general provisions, which state, in part, that a recipient may not:

> *Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others.*
>
> *Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others.*

The regulation also states:

> *Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.*

The institution must analyze the appropriateness of an aid or service in its specific context. For example, the type of assistance needed in a classroom by a student who is hearing impaired may vary, depending upon whether the format is a large lecture hall or a

seminar. With the one-way communication of a lecture, providing the service of a notetaker may be adequate; but in the two-way communication of a seminar, an interpreter may be needed.

Cost of Auxiliary Aids

Recipient institutions are responsible for the provision of effective auxiliary aids to students with handicaps. If an aid is necessary for classroom or other appropriate (nonpersonal) use, the institution must make it available. A student with a handicap may not be required to pay part or all of the costs of that aid or service. An institution may not place a limit on its expenditure for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its obligation to provide auxiliary aids on the availability of funds. In many cases, a recipient may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the recipient remains responsible for providing the aid.

Personal Aids and Services

An issue which is often misunderstood by recipients and students is the provision of personal aids and services to postsecondary students. Personal aids

and services, including help in bathing, dressing, or other personal care, are not required to be provided by postsecondary recipients. The Section 504 regulation states:

> *Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.*

In order to ensure that students with handicaps are given a free appropriate public education, local education agencies are required to provide many services and aids of a personal nature to students with handicaps when they are enrolled in elementary and secondary schools. However, once handicapped students graduate from a high school program, or its equivalent, educational institutions are no longer required to provide aids, devices, or services of a personal nature.

A postsecondary recipient may not deny a service to a student with a handicap if that service is offered to nonhandicapped students. Students with handicaps must be given equal access to regular medical treatment and health services offered by the recipient. For example, if a college's health care unit offers a cholesterol test, a student with a handicap who requests this service must have it provided.

The provision of personal services relating to certain individual academic activities are not required of postsecondary recipients. Personal attendants and individually prescribed devices are the responsibility of the student and not of the institution. For example, readers may be provided for classroom use, but recipients are not required to provide readers for personal use or for help during individual study time.

Questions Commonly Asked by Recipients and Students

Q: What are a recipient's obligations to provide auxiliary aids for library study?

A: Libraries and some of its significant and basic materials must be made accessible by the recipient to students with handicaps. Students with handicaps must have the appropriate auxiliary aids needed to locate and obtain library resources. A postsecondary school must ensure that its library's basic index of holdings (whether formatted on-line or on index cards) is accessible. For example, a screen and keyboard (or card file) must be placed within reach of a student using a wheelchair. If a Braille index of holdings is not available for blind students, readers must be provided for necessary assistance.

Articles and materials which are library holdings and are required for course work must be accessible to all students enrolled in that course.

This means that if the material is required course work, then the text must be read for a blind student, or provided in Braille or on tape. A student's actual study time and use of these articles are considered personal study time and the institution has no further obligation to provide additional auxiliary aids.

Q: *What if an instructor objects to the use of an auxiliary or personal aid?*

A: *Sometimes postsecondary instructors may not be familiar with Section 504 requirements regarding the use of an auxiliary or personal aid in their classrooms. Most often, questions arise when a student uses a tape recorder. College teachers may believe recording lectures is an infringement upon their own or other students' academic freedom, or constitutes copyright violation.*

The instructor may not forbid a student's use of an aid if that prohibition limits the student's participation in the school program. The Section 504 regulations states:

> *A recipient may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.*

In order to both allow a student with a handicap to use an effective aid and protect the instructor, the recipient may require the student to sign an agreement so as not to infringe on a potential copyright or to limit freedom of speech.

Q: What if students with handicaps require auxiliary aids during an examination?

A: A student may need an auxiliary aid or service in order to successfully complete a course exam. This may mean that a student be allowed to give oral rather than written answers. It also may be possible for a student to present a tape containing the oral examination response. A test should ultimately measure a student's achievements and not the extent of the handicap.

Q: Can postsecondary recipients treat a foreign student with disabilities who needs auxiliary aids differently than American students?

A: No, a recipient may not treat a foreign student who needs auxiliary aids differently than an American student. A postsecondary recipient of federal financial assistance must provide to a foreign student with a handicap the same type of auxiliary aids and services it would provide to an American student with a handicap. Section 504 requires that the provision of services be based on a student's disability and not on other criteria, such as nationality.

Q: Are institutions responsible for providing auxiliary services to handicapped students in filling out financial aid and student employment applications, or other forms of necessary paperwork?

A: Yes, a recipient institution must provide services to disabled students who may need assistance in filling out aid applications or other forms. If the student requesting assistance is still in the process of being evaluated to determine eligibility for an auxiliary aid or service, help with this paperwork by the recipient is mandated in the interim.

Q: Does a postsecondary recipient have to provide auxiliary aids and services for a nondegree student?

A: Yes, students with handicaps who are auditing classes or who otherwise are not working for a degree must be provided auxiliary aids and services to the same extent as students who are in a degree-granting program.

For More Information

For more information on Section 504 and its application to auxiliary aids and services for handicapped students in postsecondary schools, please contact your regional Office for Civil Rights.

To obtain additional assistance, see OCR's list of its ten regional offices, which contains the address and telephone number for the OCR office that serves your area.

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